

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO IMMEDIATE

CINCPAC

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EXDIS, CINCPAC EXCLUSIVE FOR POLAD TO PASS TO HABIB

E.O. 11652: XGDS-3

TAGS: PINT, JA, US

SUBJECT: LOCKHEED AFFAIR

REF: STATE 37543

1. AMB TOGO UNDER INSTRUCTIONS CALLED ON ACTING SECY INGERSOLL AFTERNOON FEB 18. PURPOSE OF VISIT WAS FORMALLY TO REPEAT GOJ REQUEST THAT US MAKE AVAILABLE WHATEVER INFORMATION IT HAD IN CONNECTION WITH LOCKHEED INCIDENT, INCLUDING ANY NAMES OF JAPANESE OFFICIALS INVOLVED. HE ALSO WISHED CLARIFY THAT PREVIOUS PUBLIC STATEMENT BY HOME MINISTER HAJIME FUKUDA HAD NOT BEEN INTENDED IN ANY WAY TO INSULT OR DISPARAGE USG. FUKUDA HAD SIMPLY SAID THAT IF USG HAD NAMES IN ITS POSSESSION, THEY SHOULD BE GIVEN TO THE JAPANESE GOVERNMENT IN ORDER RESOLVE SUSPICION AS RAPIDLY AS POSSIBLE. TOGO CONTINUED THAT IT WAS OBVIOUS THAT IT SHOULD BE UP TO THE JAPANESE TO INVESTIGATE WHAT,

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IF ANYTHING, HAD HAPPENED IN JAPAN INVOLVING LOCKHEED AND

JAPANESE GOVERNMENT OFFICIALS. HOWEVER, WITNESSES AT THE RECENT DIET SESSION HAD GIVEN TESTIMONY CONTRARY TO THAT GIVEN BY WITNESSES BEFORE THE CHURCH SUBCOMMITTEE, AND AT THE PRESENT TIME SUSPICION WAS STILL RIFE. THE GOJ WAS INVESTIGATING THE POSSIBILITY OF PROSECUTING INDIVIDUALS INVOLVED UNDER TAX LAWS OR POSSIBLE VIOLATION OF FOREIGN

EXCHANGE REGULATIONS; HOWEVER, THE FEELING OF MIKI AND HIS GOVERNMENT WAS THAT CURRENT SITUATION COULD NOT BE ALLOWED TO CONTINUE WITHOUT RISKING SERIOUS DAMAGE TO GOVERNMENT PROCESSES.

2. ACTING SECY AGREED THAT SITUATION WAS DIFFICULT ONE AND SAID THAT HE HAD THEREFORE ASKED DEPT'S LEGAL ADVISOR MONROE LEIGH TO SIT IN ON MEETING. HE THEN ASKED MR. LEIGH TO DISCUSS LEGAL ASPECTS OF SITUATION.

3. LEIGH POINTED OUT THAT THOUGH TWO BRANCHES OF GOVERNMENT AND ONE SEMI-INDEPENDENT AGENCY WERE INVOLVED, USG WOULD LIKE TO SPEAK WITH ONE VOICE. HE NOTED THAT IF SEC SOUGHT TO TRANSFER THE DOCUMENTS UNDER ITS JURISDICTION TO GOJ AT THIS STAGE, IT WAS QUITE POSSIBLE THAT LOCKHEED ATTORNEYS MIGHT GO TO COURT AND GET A RESTRAINING ORDER PROHIBITING SUCH TRANSFER. GROUNDS WOULD BE THAT LOCKHEED DOCUMENTS HAD BEEN MADE AVAILABLE TO SEC STRICTLY FOR PURPOSES OF INVESTIGATION AND NO OTHER PURPOSE. LEIGH SAID HE UNDERSTOOD THAT GOJ HAD ALREADY BEEN DIRECTLY IN TOUCH WITH THE CHURCH SUBCOMMITTEE AND HAD BEEN INFORMED THAT THE SUBCOMMITTEE HAD NO NAMES OF INDIVIDUALS IN MATERIAL IT HELD. IN DISCUSSING PROPER COURSES OF ACTION, LEIGH SAID STATE HAD BEEN IN TOUCH WITH BOTH THE SUBCOMMITTEE AND THE SEC AND WILL CONTINUE TO MAKE THEM AWARE OF GOJ'S DESIRE THAT DOCUMENTS BE MADE AVAILABLE. IT WAS POSSIBLE THAT WE MIGHT ASK THAT THE DOCUMENTS BE MADE AVAILABLE TO THE US DEPT OF JUSTICE WHICH COULD THEN REFER THEM TO GOJ MINISTRY OF JUSTICE UNDER APPROPRIATE CONTROLS.

4. LEIGH EMPHASIZED THAT IN GENERAL US INVESTIGATIVE AGENCIES DO NOT MAKE AVAILABLE TO ANYONE ELSE DOCUMENTS RELATING TO ONGOING INVESTIGATIONS BECAUSE PREMATURE RE-SECRET

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LEASE COULD BOTH IMPEDE THE INVESTIGATION AND POSSIBLY BE HARMFUL TO ANY INDIVIDUAL MENTIONED IN ESSENTIALLY UNPROVEN AND UNEVALUATED TESTIMONY. IT HAS BEEN A LONG-STANDING PRACTICE OF THE SEC NOT TO GIVE OUT ANY INFORMATION RELATING TO ONGOING INQUIRIES, EVEN TO THE CONGRESSIONAL COMMITTEE HAVING OVERSIGHT OVER SEC. IT WOULD BE INCONSISTENT WITH THIS PRACTICE TO RELEASE DOCUMENTS TO THE JAPANESE DIET AND NOT TO CONGRESS.

5. LEIGH OUTLINED ADDITIONAL PROCEDURES APART FROM GOVERNMENTAL ONES. UNDER US LAW THERE IS PROCEDURE CALLED JUDICIAL ASSISTANCE AVAILABLE TO FOREIGN GOVERNMENTS. UNDER THAT LAW, IF A LEGAL PROCEEDING HAS BEEN INSTITUTED IN JAPAN, THE GOJ COULD APPLY TO A US COURT FOR A COURT ORDER REQUIRING A FIRM TO PROVIDE THE SAME DOCUMENTS TO THE

JAPANESE AS IT HAD TO THE SEC. THE GOJ WOULD OF COURSE WISH TO SEEK ADVICE OF A US ATTORNEY IF THEY WISHED TO EMBARK ON SUCH A COURSE AND TO BEAR IN MIND THAT THIS WOULD BE POSSIBLE ONLY IF LEGAL PROCEEDINGS HAD BEGUN IN JAPAN. IT WOULD ALSO BE POSSIBLE FOR THE GOJ TO BRING A DIRECT PROCEEDING AGAINST LOCKHEED IN A US DISTRICT COURT AND REQUIRE PRODUCTION OF MATERIALS. IT COULD ALSO ASK FOR DAMAGES IN SUCH A PROCEEDING.

6. LEIGH RECALLED THAT STATE DEPT HAD SEVERAL MONTHS AGO FILED WITH THE DEPT OF JUSTICE A SUGGESTION OF INTEREST ASKING THE COURT TO PLACE A PROTECTIVE ORDER ON THE MATERIALS INVOLVED IN THE LOCKHEED CASE, NOT ONLY RELATING TO JAPAN BUT TO OTHER COUNTRIES AS WELL. THIS WAS DONE NOT TO PREVENT DISCLOSURE BUT SIMPLY TO MAKE SURE THAT NAMES OR ALLEGATIONS NOT BE PREMATURELY DISCLOSED PRIOR TO COMPLETION OF THE INVESTIGATION FOR FEAR OF POSSIBLE DAMAGING EFFECTS ON OUR INTERNATIONAL RELATIONS. IF, HOWEVER, THE SEC DECIDED IT COULD MAKE MATERIALS AVAILABLE TO JAPAN, WE COULD AND WOULD ASK FOR A MODIFICATION OF THAT ORDER.

7. TOGO ASKED WHETHER IN THE MEANTIME THERE WAS NO WAY OF ASCERTAINING WHETHER ANY NAMES OF JAPANESE GOVERNMENT OFFICIALS ALLEGED TO BE INVOLVED WERE IN THE POSSESSION OF SECRET

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THE US GOVERNMENT. ACTING SECY REPLIED THAT DEPT DID NOT KNOW OF ANY SUCH NAMES AND WERE NOT IN POSSESSION OF ANY. HE SAID HE ALSO WAS INFORMED THAT SENATOR CHURCH AND HIS COMMITTEE HAD NO NAMES. TOGO EXPRESSED GRATITUDE FOR THE DETAILED INFORMATION PROVIDED AND SAID HIS GOVERNMENT WOULD CONSIDER POSSIBILITY OF FURTHER LEGAL STEPS. HE SAID HE WOULD TELL PRESS SIMPLY THAT HE HAD CALLED ON SECY TO PRESENT FORMAL JAPANESE REQUEST FOR AVAILABLE MATERIALS AND HAD BEEN TOLD THAT STATE DEPT, SEC AND OTHER INTERESTED AGENCIES WOULD CONTINUE TO STUDY MATTER URGENTLY.

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